IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 70 OF 2005

PRABHAKAR KRISHNAJI LELE .. PETITIONER

Vs.

VIJAY MADHAV KHER .. RESPONDENTS

Mr. M. C. Dixit for petitioner

Mr. A. L. Patki for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-17-3-2005

P.C.

This writ petition is filed by the original defendant-tenant challenging the order dated 3/12/2004 passed by the District Judge, Ratnagiri in Civil Appeal No. 104 of 2000. By the impugned order the amendment application filed by the defendant during the pendency of the appeal has been dismissed. The defendant wants to amend the written statement.

2. The decree has been passed on the ground of acquisition of suitable alternate accommodation by the defendant i.e. under Section 13(1)(l) of Bombay Rents Hotel and Lodging House Rates Control Act, 1947 ("the Rent Act" for short). By way of this amendment, the defendant wants to introduce a new case. He wants to contend that his sons are of a marriageable age; they may get married soon and in that event the alternate accommodation which he is said to have acquired would not be suitable for him. The defendant will require the suit premises for his occupation. The lower appellate court has rejected the said application on the ground that by way of this amendment a complete new case is being sought to be introduced.

3. I have heard the learned counsel appearing for the defendant. He has relied on the judgments of the Supreme Court in **Ishwardas v. The State of Madhya Pradesh, AIR 1979 S.C. 551**, **Shikharchand Jain v. Digambar Jain Praband Karini Sabha & Ors., AIR 1974 S C 1173**, **& M/s. Estralla Rubber v. Dass Estate, AIR 2001 S C 3295.** The learned Counsel contended that the amendment necessiated by subsequent events ought to be allowed during the pendency of the appeal. He submitted that the premises which could at once upon a time be called suitable for the defendant would no longer be suitable if the defendant's sons get married and this aspect of suitability ought to be considered by

the court in the light of changed circumstances. He contended that that can be done only if this amendment is allowed. The learned counsel urged that if this amendment is not allowed severe prejudice would be caused to the petitioner. I am unable to agree with the learned counsel.

4. I have been taken through the judgment of the trial court where the aspect of availability of suitable alternate accommodation has been considered. It appears that the defendant has constructed a house having three rooms. Since the appeal is pending I do not want to express any opinion on the merits of the case.

5. There can be no dispute about the proposition that amendment of written statement can be allowed at the appellate stage to enable a party to raise a new plea, if the necessary material is already on record. Similarly if the amendment is required for proper adjudication of the issue, it can be allowed. If the amendment is likely to prevent multiplicity of litigation it can be allowed. The judgments cited by the learned counsel for the defendant state the same principles. Whether amendment should be allowed or not would depend on facts and circumstances of each case.

6. In **Ganpat Ram Sharma & Others v. Smt. Gayatri Devi AIR. 1987 S C 2016** the Supreme Court was considering section 14(1)(h) of the Delhi Rent Control Act which is similar to Section 13(1)(h) of the Rent Act. The Supreme Court observed that the word 'has built' or 'has been allotted'

clearly mean that the tenant has already built, acquired or 'has been allotted' the residence to which he can move and that on the day of the application for his eviction his right to reside therein exists. In view of this the possible subsequent events, namely the marriage of the defendant's sons cannot be allowed to be introduced in the written statement by amendment. The lower appellate court has rightly observed that now the defendant wants to contend that the house which was found to be a suitable alternate accommodation is only an additional accomodation. In my opinion, an amendment which materially alters the defendants case cannot be allowed at the appellate stage. The amendment application is rightly rejected as being malafide and as an attempt to start fresh round of litigation. There is no merit in the petition. The petition is rejected.

7. Certified copy expedited.

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